



## Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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### FINAL MINUTES FOR TELECONFERENCE MEETING

Held at 12:00 p.m. on August 30, 2005

9535 E. Doubletree Ranch Road • Scottsdale, Arizona

#### **Board Members**

Tim B. Hunter, M.D., Chair  
William R. Martin III, M.D., Vice Chair  
Douglas D. Lee, M.D., Secretary  
Patrick N. Connell, M.D.  
Ronnie R. Cox, Ph.D.  
Robert P. Goldfarb, M.D.  
Becky Jordan  
Ram R. Krishna, M.D.  
Lorraine L. Mackstaller, M.D.  
Sharon B. Megdal, Ph.D.  
Dona Pardo, Ph.D., R.N.

**TUESDAY, AUGUST 30, 2005**

#### **Call to Order**

Tim B. Hunter, M.D., Chair called the meeting to order at 12:03 p.m.

#### **Roll Call**

Douglas D. Lee, M.D., Secretary took roll call. The following Board members were present: Patrick N. Connell, M.D., Ronnie R. Cox, Ph.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., and Dona Pardo, Ph.D., R.N. The following Board member was absent: William R. Martin, III, M.D. The following Board member joined the meeting at 12:05 p.m.: Lorraine Mackstaller, M.D.

William R. Martin III, M.D. was unable to attend the meeting due to a scheduled surgery. Mr. Miller extended apologies from Dr. Martin for his absence and explained that Dr. Martin would like to have been present.

#### **Call to the Public**

No statements were made at the Call to the Public.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	SUBJECT
1.	MD-05-0884A	AMB	HARSHAD S. PATEL, M.D.	22757	Issue a summary restriction preventing the physician from seeing or treating all female patients without a licensed female chaperone in the room for the entire examination. The licensed medical assistant must sign off on the chart that she was present throughout the entire examination. The summary restriction will be in effect unless the physician signs a consent agreement to not see female patients without a chaperone.

Mark Nanney, M.D., Chief Medical Consultant, made a presentation to the Board. The complainant is a 20-year-old female who presented to Harshad S. Patel, M.D. with a complaint of possible vaginitis. Dr. Roderic Huber, two investigators and the police interviewed the patient and her statements have been consistent. The patient states Dr. Patel instructed her to raise her shirt and bra and lower her pants. He turned her around and bent her face down over the exam table. He placed an ungloved finger in her vagina and anus and pulled her into his lap. He also fondled her breast. She got dressed, exited the exam room, and called the police from the physician's office and reported the incident. Dr. Huber and the investigators who interviewed her found her to be credible. The police, investigators, and Dr. Nanney interviewed Dr. Patel and he gave inconsistent and conflicting statements. Dr. Patel stated to the Board

that he did a visual genital exam and he denied ever doing a rectal or vaginal exam. He reported to the police officer that he did do a rectal exam. Dr. Patel now denies reporting this to the police officer. The investigators and Dr. Nanney found Dr. Patel to not be credible. Dr. Nanney and the investigators did not feel this is a he-said she-said case and they feel Dr. Patel is a danger to the public and recommend suspension.

Tim B. Hunter, M.D. asked if criminal charges were filed against Dr. Patel. Mr. Miller answered that information had not been received.

Dr. Patel was present with legal counsel, Mr. Pete Fisher. Mr. Fisher made an opening statement to the Board and stated that this was an extraordinarily serious allegation that had been made and this was the first chance they had to hear the allegations against Dr. Patel. They had no chance whatsoever to make any preparation to deal with these charges. There was no opportunity to see a police report, to speak with witnesses or to cross exam anyone. Dr. Patel denies the allegations. Mr. Fisher noted that there are due process rights granted to Dr. Patel. The investigation against Dr. Patel is ongoing. There have been no charges brought against Dr. Patel that he is aware of and until the investigation by the Sheriff's Department is completed, he cautioned the Board to be careful in how they deal with Dr. Patel under these circumstances.

Mr. Fisher noted that Dr. Patel has no prior complaints against him. He has practiced in the community for a number of years in an office setting and as a hospitalist. He is Board certified in Internal Medicine. This first complaint against Dr. Patel has a complete contradiction as to what happened. Mr. Fisher commented that Dr. Patel had requested the Board to look at alternatives to a complete suspension. He stated that if the Board feels action is necessary to protect the public against imminent danger, he requests the Board to look at what is necessary as a protection. He suggested as a possibility that the Board require the doctor to have a licensed assistant with him at all times when examining female patients. Mr. Fisher contacted a staffing service and arranged for an RN or a LPN to work at the office the next day to work from 12:00 to 5:00 p.m. Mr. Fisher said that Dr. Patel was willing to maintain a licensed person in his office for as long as the interim order was in place, the investigation is ongoing, or until a final decision was reached after a hearing. He noted that if the Board feels an age restriction would give an additional level of comfort, Dr. Patel practices with Dr. Pravel Patel, his partner, who is willing to see all patients under the age of 40. These things are proposed as measures to adequately protect the public without taking away the doctor's right to practice. Dr. Patel is a doctor who has practiced a number of years in the community without a complaint. Mr. Fisher commented that this is his first complaint and there has been no due process. He summarized that is an issue of who is credible.

Ram R. Krishna, M.D. asked Dr. Nanney if the quality of care was an issue and had Dr. Patel been notified regarding the examination of the vaginal discharge. Dr. Nanney answered that there is a quality of care issue, the quality of care for vaginal discharge is relatively routine, and there is a lack of quality of care. Christine Cassetta said because it is a summary action, the doctor had not been notified of any violations. She stated that Dr. Nanney had opined as shown in the materials that he felt the exam was inappropriate for the conditions for which the patient presented. Dr. Nanney stated it has not been reviewed by an Independent Medical Consultant yet.

Tim B. Hunter, M.D. noted that Mr. Fisher indicated the doctor was willing to sign a consent agreement to have a female chaperone for all cases and perhaps not to see patients under the age of 40 or whatever age the Board might specify until the matter is concluded. Mr. Fisher agreed with the overview. Timothy C. Miller, J.D. added that this was offered to the Board once before and he made the decision at that time not to accept that limitation because in this case a chaperone would not be sufficient to ensure protection of the public safety. In the doctor's treatment notes he noted that she was well built. Based on that comment and other evidence, Mr. Miller concluded that treating female patients would not be appropriate with or without a chaperone. Mr. Miller offered Dr. Patel a restriction to only see men. The doctor would not agree with that restriction, which is why this matter was brought forward as a summary suspension action.

Dr. Krishna suggested after hearing the opening statement from the doctor's counsel that a restriction needs to be in place. Ms. Cassetta said for a summary action the Board could summarily suspend the license or summarily restrict the license whichever the Board felt was more appropriate. At this point, it would not be probation. Dr. Krishna asked if the license could be restricted without probation. Ms. Cassetta said it could be restricted without probation by ordering a summary restriction to see or treat female patients. It would be considered a summary action.

**MOTION: Ram R. Krishna, M.D. moved to issue a summary restriction preventing the doctor from seeing or treating female patients over the age of 12 without a licensed female medical assistant in the room for the entire examination. The licensed medical assistant must sign off on the chart that she was present throughout the entire examination.**

**SECONDED: Ronnie R. Cox, Ph.D.**

Tim B. Hunter, M.D. stated the motion would be effective immediately. He suggested offering the doctor a consent agreement. Ms. Cassetta replied the Board could vote on a summary restriction that would take affect at 5:00 p.m. unless the doctor signs a consent agreement. Dr. Krishna agreed to amend the motion to include the suggestion from legal.

Sharon B. Megdal, Ph.D. asked for clarification on the consent agreement. Ms. Cassetta replied that the consent agreement would be in effect until the Board further adjudicates, has further evidence, or the doctor comes forward with a request to lift the stay because of a change in circumstance. Dr. Megdal asked if there was an outstanding interim order. Ms. Cassetta replied that there was.

Robert P. Goldfarb, M.D. stated he was uncomfortable with the doctor seeing or treating females below the age of 12 and would prefer the restriction be changed to include all female patients. Dr. Krishna, Dr. Hunter, and Dr. Cox agreed to amend the motion.

Douglas D. Lee, M.D. stated he was uncomfortable with allowing him to see any patients. There were incredible inconsistencies between the patient and the doctor. Dr. Lee was in favor of imposing a stayed summary of suspension pending the acceptance of a

chaperone for all female exams. Patrick N. Connell, M.D. agreed with Dr. Lee and noted there was fairly credible evidence that what happened in exam room in no way corresponds to any known accepted standards in medical practice or examination. Dr. Connell added that the doctor should not be allowed to examine any female patients until the case is adjudicated at a formal hearing within 60 days.

**AMENDED MOTION: Ram R. Krishna, M.D. moved to issue a summary restriction preventing the physician from seeing or treating all female patients without a licensed female chaperone in the room for the entire examination. The licensed medical assistant must sign off on the chart that she was present throughout the entire examination. The summary restriction will be in effect unless the physician signs a consent agreement to not see female patients without a chaperone.**

**SECONDED: Ronnie R. Cox, Ph.D.**

Lorraine L. Mackstaller, M.D. stated Dr. Patel has not been charged yet and his testimony to the police and to the Board was inconsistent. She asked what the Board's obligations were in regards to due process. Ms. Cassetta replied that under law, in an emergency, if an action needs to be taken to protect the public, the Board is legally required to notify the doctor. Dr. Patel was notified and appeared at the meeting. Ms. Cassetta stated that the Board has fulfilled all legal obligations.

Ram R. Krishna, M.D. commented that due process was being done. The case is still under investigation and Dr. Patel is still going through psychoanalysis. The Board can protect the public by invoking the restriction. If the doctor violates his restriction he could be suspended. Dr. Goldfarb agreed with Dr. Krishna and felt the Board could act on any information that is found during the investigation and felt this was the most just way to handle the situation. Dr. Cox agreed that this would be fair treatment.

Sharon B. Megdal, Ph.D. asked who would be considered a licensed healthcare professional. Ms. Cassetta replied that a medical assistant is not licensed by any entity.

Dr. Connell asked if the doctor entered into a consent agreement if it was a reportable action. Ms. Cassetta stated that it was.

**ROLL CALL VOTE: The following Board Members were in favor of the motion: Ronnie R. Cox, Ph.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Lorraine L. Mackstaller, M.D. The following Board Members were against the motion: Patrick N. Connell, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N. The following Board Member was absent: William R. Martin, III, M.D.**

**VOTE: 6-yay, 4-nay, 0-abstained/recused, 1-absent**

**MOTION PASSED.**

2.	MD-03-0749A MD-05-0173A MD-05-0798A MD-05-0888A	AMB	DAVID A. WILBIRT, M.D.	9920	Summarily suspend the physician's license.
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Victoria Kamm, Senior Investigator presented the case to the Board. Ms. Kamm stated that the while the Board was investigating three open allegations of inappropriate prescribing, Dr. Wilbirt suffered a stroke and entered into a Consent Agreement with the Board on April 13, 2005 for practice limitations. On February 17, 2005 a neuropsychologist, Dr. Lisa Watts, evaluated Dr. Wilbert. During the course of several evaluations with the neuropsychologist, Dr. Wilbirt admitted to Marijuana use once per month along with alcohol and/or drug problems. Dr. Watt's Neuropsychology assessment noted that Dr. Wilbirt had suffered significant cognizant deficits as a result of the stroke, and could not safely practice medicine at that time.

On June 15, 2005, Drug Enforcement Agents, acting on a four-year investigation of Dr. Wilbirt's involvement an illegal Internet drug scheme, performed a search and seizure at his home and office. Agents seized three plastic bags of Marijuana from Dr. Wilbert's home. On August 22, 2005 a pharmacist from CVS Pharmacy notified the Board's staff that Dr. Wilbert had either written or called in several prescriptions for controlled substances for a patient who appeared to be drug-seeking. Of note was a prescription for Xanax that was called in by Dr. Wilbert on August 22, 2005, which is a date several months after the date of his Consent Agreement. Dr. Wilbert called in the prescription in under his surrendered DEA number.

Dr. Wilbert was subpoenaed to appear for an investigative interview August 26, 2005. At the advice of his attorney, Dr. Wilbert evoked his 5<sup>th</sup> Amendment right and declined to appear for the Interview. Board staff communicated with the attorney and confirmed that he was aware the Board would proceed with the investigation. It was the staff recommendation that Dr. Wilbert's license be Summarily Suspended in order to protect the general public.

Neither Dr. Wilbert or his legal counsel were present.

Robert P. Goldfarb, M.D. stated the doctor clearly was unable to comply with the Board Order.

**MOTION: Robert P. Goldfarb, M.D. moved to summarily suspend the physician's license.**

**SECONDED: Lorraine L. Mackstaller, M.D.**

**ROLL CALL VOTE: The following Board Members were in favor of the motion: Patrick N. Connell, M.D., Ronnie R. Cox, Ph.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Lorraine L. Mackstaller, M.D., Sharon B. Megdal, Ph.D., and Dona Pardo, Ph.D., R.N. The following Board Member was absent: William R. Martin, III, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

3.	MD-05-0868A	AMB	JOHN C. WOODS, M.D.	19005	Summarily Suspend the physician's license
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Patricia McSorley, Investigator, presented the case to the Board. The Board's staff opened the investigation on August 22, 2005 after being notified that Dr. Woods was arrested and in jail on a 1.2 million bail. Dr. Woods was charged with four counts of aggravated assault, one count of kidnapping, one count of disorderly conduct, two counts of weapons charges, one count of criminal damage, two counts of discharging a weapon and three counts of endangerment. These charges are a result of a domestic violence dispute Dr. Woods had with his spouse on August 14, 2005. Dr. Woods was alleged to have struck his spouse in her face with a gun, to have shot at both his spouse's car and feet and to hold her against her will. Dr. Woods has an Injunction against harassment which was ordered on November 17, 2004 because he had threatened to hit a neighbor. The injunction orders that he not approach his neighbor and prohibits him from having firearms. Dr. Woods' wife also obtained an Order of Protection as a result of the assault on August 14, 2005.

Additionally, On July 19, 2005 Dr. Woods resigned his position from Community Counseling Center in Holbrook. The Community Counseling Center documented that on July 7, 2005 Dr. Woods referred to Dr. Wilderman, the Chief Executive Officer, as a "racial slur" and threatened to punch him. The Community Center also documented additional inappropriate venting behavior. When Dr. Woods was contacted about his conduct he became irate and insubordinate. Additionally, Dr. Woods' chart documentation was found to be unacceptable. Staff recommendation was that immediate action be taken to Summarily Suspend the license based on Dr. Wood's violent behavior.

Neither Dr. Woods nor his attorney were present.

Patrick N. Connell, M.D. noted Dr. Woods was placed on Probation for five years in January of 2002. The Probation Order required Dr. Woods to provide quarterly reports to the Board and to obtain a treating therapist. Ms. McSorley confirmed that Dr. Woods had complied with the Probationary Order. Mr. Miller stated Dr. Woods' Probationary Order was terminated in its second year when the physician requested it's termination in conjunction with a supporting recommendation from his treating psychiatrist.

Dr. Connell then moved to Summarily Suspend the license based on the presented materials and based on his determination that Dr. Woods was a danger to the public and unstable psychiatrically.

**MOTION: Patrick N. Connell, M.D. moved to summarily suspend the physician's license.**

**SECONDED: Ram R. Krishna, M.D.**

**ROLL CALL VOTE: The following Board Members were in favor of the motion: Patrick N. Connell, M.D., Ronnie R. Cox, Ph.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Lorraine L. Mackstaller, M.D., Sharon B. Megdal, Ph.D., and Dona Pardo, Ph.D., R.N. The following Board Member was absent: William R. Martin, III, M.D.**

**VOTE: 10-yay, 0-nay, 0-abstain/recuse, 1-absent**

**MOTION PASSED.**

The meeting adjourned at 12:40.

[Seal]

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Timothy C. Miller, J.D., Executive Director